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## **California Environmental Protection Agency**

**Unified Program Bulletin**  
0607-01

**DATE: June 6, 2007**

**TO: All Certified Unified Program Agencies**

**SUBJECT: CUPA Evaluations and Federal Facility Surcharge Payment**

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### **Introduction**

This bulletin addresses the issue of surcharge collections by CUPAs and Cal/EPA's periodic evaluation of CUPAs.

Certified Unified Program Agencies (CUPAs) are required to assess and collect the Unified Program Single Fee, encompassing several environmental charges, from regulated facilities including those owned by the federal government. For the Underground Storage Tank (UST), Hazardous Waste Management and Accidental Release Prevention (Cal/ARP) programs, it is undisputed that Congress has clearly waived sovereign immunity and has directed agencies of the federal government to pay applicable fees. For the Fire Code, Above Ground Tanks and Business Plan programs, some federal agencies have asserted there is no clear waiver in federal law and payment of these fees by federal facilities has, in some cases, has been disputed.

### **Surcharge Payment Issue**

Cal/EPA has defined three surcharges within the Unified Program: general Oversight, UST, and CalARP. The UST and CalARP surcharges are specific to their programs and therefore fall under the respective waivers of sovereign immunity. The General Oversight surcharge is not specific to a program and supports the Hazardous Waste Management, Fire Code, Above Ground Tank and Business Plan programs. Because a portion of this surcharge goes to support state oversight of the Fire Code, Above Ground Tank and Business Plan programs, some federal facilities have refused to pay all or a portion of the General Oversight surcharge.

In taking a different position than those federal facilities disputing the fees and surcharge, Cal/EPA has relied on the sovereign immunity waiver in the federal Resource Conservation and Recovery Act (RCRA), as well as on federal case law holding that federal agencies are subject to assessments if they can be properly characterized as state fees rather than state taxes. Representatives of the federal government and California EPA have met and discussed these issues, but at this time have not come to resolution.

## **CUPA Evaluation Issue**

Cal/EPA is required to periodically evaluate each CUPA's ability to implement and manage all aspects of the programs under the Unified Program. During this evaluation process, some CUPAs have been found deficient for failing to take enforcement action to collect state surcharge fees owed by the federal government.

## **Resolution**

Cal/EPA has examined the amount of the General Oversight surcharge that supports each of the programs covered. In state fiscal year 2005/06, the General Oversight surcharge was \$24.00 per regulated business. Of that amount, a total of \$4.32 supported the Fire Code, Above Ground Tank and Business Plan programs.

In consideration of all of the relevant circumstances, including the small amount of the state surcharge in dispute and the high costs to CUPAs of litigation, while this bulletin is in effect Cal/EPA will not find a CUPA deficient in program implementation for failure to collect the portion of the General Oversight surcharge from federal facilities for the disputed program areas of Fire Code, Above Ground Tank and Business Plan programs. However, to aid Cal/EPA in determining the extent of the dispute, federal refusal to pay must be reported to the Ca/EPA Unified Program.

This is not a waiver of the right to enforce the surcharge. Cal/ EPA is not discouraging any CUPA from taking appropriate action to enforce collection of the General Oversight surcharge should it choose to do so. CUPAs must continue to enforce all programs under the Unified Program at federal facilities and to take appropriate action to collect surcharge in the non-disputed programs (UST, Hazardous Waste Management and Cal/ARP).